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LOK SABHA

The following Bills were introduced in Lok Sabha on the 23rd December, 1960:—

*BILL No. 96 OF 1960

A Bill to supplement the criminal law.

BE it enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Criminal Law Amendment Act, 1960. Short title and extent

5 (2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Whoever by words either spoken or written, or by signs, or by visible representation or otherwise, questions the territorial integrity or frontiers of India in a manner which is, or is likely to be, prejudicial to the interests of the safety or security of India, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Questioning the territorial integrity or frontiers of India in a manner prejudicial to the interests of safety and security of India.

3. (1) If the Central Government considers that in the interests of the safety or security of India or in the public interest, it is necessary or expedient so to do, it may, by notification in the Official Gazette, declare any area adjoining the frontiers of India to be a notified area; and thereupon, for so long as the notification is in force, such area shall be a notified area for the purposes of this section.

Statements, etc., in a notified area prejudicial to maintenance of public order, etc., therein or to safety or security

*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Lok Sabha the consideration of the Bill.

of India and
regulation
of entry of
persons in
such area.

(2) Whoever makes, publishes or circulates in any notified area any statement, rumour or report which is, or is likely to be, prejudicial to the maintenance of public order or essential supplies or services in the said area or to the interests of the safety or security of India, shall be punishable with imprisonment for a term which 5 may extend to three years, or with fine, or with both.

(3) On and after such day as may be specified in, and subject to any exemptions for which provision may be made by, a notification issued under sub-section (1), no person who was not immediately 10 before the said day a resident in the area declared to be a notified area by the notification shall enter or attempt to enter that area or be therein except in accordance with the terms of a permit in writing granted to him by a person, not below the rank of a magistrate of the first class, specified in the said notification.

(4) Any police officer, not below the rank of sub-inspector of 15 police, may search any person entering or attempting to enter, or being in, or leaving, a notified area and any vehicle, vessel, animal or article brought in by such person, and may, for the purpose of the search, detain such person, vehicle, vessel, animal or article:

Provided that no woman shall be searched in pursuance of this 20 sub-section except by a woman authorised in this behalf by the police officer.

(5) If any person is in a notified area in contravention of the provisions of sub-section (3), then, without prejudice to any other proceedings which may be taken against him, he may be removed 25 therefrom by or under the direction of any police officer on duty in the notified area, not below the rank of sub-inspector of police.

(6) If any person enters or attempts to enter a notified area or is therein in contravention of any of the provisions of sub-section (3), he shall be punishable with imprisonment for a term which may 30 extend to one year, or with fine, or with both.

Power to
declare cer-
tain publi-
cations
forfeited
and to issue
search war-
rants for the
same.

4. (1) Where any newspaper or book as defined in the Press and Registration of Books Act, 1867, or any other document, wherever 25 of 1867 . printed, appears to the State Government to contain any matter the publication of which is punishable under section 2 or sub-section (2) of section 3, the State Government may, by notification in the 35 Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter and every copy of such book or other document to be forfeited to the Government, and thereupon any police officer may seize the same wherever found and any magistrate may by warrant authorise any 40 police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue

or any copy of such book or other document may be or may be reasonably suspected to be.

(2) The powers conferred by sub-section (1) on the State Government may also be exercised by the Central Government.

5 (3) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

5. (1) Any person having any interest in any newspaper, book or other document in respect of which an order of forfeiture has been made under section 4 may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document in respect of which the order was made did not contain any matter of such a nature as is referred to in sub-section (1) of section 4.

Application
to High
Court to set
aside order
of forfeiture.

5 of 1898. 15 (2) The provisions of sections 99C to 99F of the Code of Criminal Procedure, 1898, shall apply in relation to an application under sub-section (1) as they apply in relation to an application under section 99B of that Code and the reference in section 99D to seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A of that Code shall be construed as a reference to any matter of such a nature as is referred to in sub-section (1) of section 4 of this Act.

(3) No order passed or action taken under section 4 shall be called in question in any court otherwise than in accordance with the provisions of this section.

STATEMENT OF OBJECTS AND REASONS

Certain recent developments in the regions adjoining the borders of India and in other parts of the country likely to jeopardise the security of the country and its frontiers point to the necessity of placing curbs on such activities. The Criminal Law Amendment Bill, 1960, accordingly seeks to provide for punishment to persons who may question the territorial integrity or frontiers of India in a manner prejudicial to the safety and security of the country, and for other cognate matters.

NEW DELHI;
The 17th December, 1960.

G. B. PANT.

FINANCIAL MEMORANDUM

There is no provision in the Criminal Law Amendment Bill, 1960, which would involve expenditure from the Consolidated Fund of India. It is, however, likely that the administration of the different provisions of the Bill, when enacted, may involve expenditure indirectly in the employment of police, Magistrates and in the care and maintenance of persons convicted. The expenditure is not expected to be large and is not likely to exceed Rs. 5,000 annually.

BILL No. 97 OF 1960

A Bill to provide for the abolition of two-member parliamentary and assembly constituencies and for the creation of single-member constituencies in their place.

BE it enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Two-Member Constituencies (Abolition) Act, 1960.

Definitions. 2. In this Act, unless the context otherwise requires,— 5

(a) "Commission" means the Election Commission appointed by the President under article 324 of the Constitution;

(b) "Delimitation Order" means the Delimitation of Parliamentary and Assembly Constituencies Order, 1956;

(c) "sitting member" means a person who, immediately before the date of publication of a notification under clause (c) of section 4 in the Official Gazette of the State concerned, is a member of the House of the People from that State or, as the case may be, of the Legislative Assembly of that State;

(d) "State" includes a Union territory; 15

(e) "two-member constituency" means a two-member parliamentary constituency specified in the First Schedule, or a two-member assembly constituency specified in the Second Schedule, to the Delimitation Order.

3. The Commission shall, as soon as may be practicable and in the manner herein provided, divide every two-member constituency (other than a two-member assembly constituency in the State of Gujarat) into two single-member constituencies, delimit their extent and decide in which of them the seat shall be reserved for the scheduled castes or, as the case may be, for the scheduled tribes, having regard to the following provisions, namely:—

Division of
two-member
constituen-
cies.

(a) all the single-member constituencies shall, as far as practicable, be geographically compact areas and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience; and

(b) the seat shall be reserved in that single-member constituency which in the opinion of the Commission has the greater concentration of population of the scheduled castes or, as the case may be, of the scheduled tribes.

Explanation.—In this section, “population” means the population as ascertained at the census held in 1951.

4. The Commission shall, as respects each State,—

Manner of
division.

(a) formulate its proposals in regard to the matters mentioned in section 3 and publish them in the Official Gazette of the State together with a notice specifying a date on or after which the proposals will be further considered by it;

(b) after considering all objections and suggestions which may have been received by it before the date so specified, determine the matters referred to in section 3; and

(c) direct, by notification published in the Official Gazette of the State and in the Gazette of India, such amendments to be made in the Delimitation Order as appear to it to be necessary for giving effect to its decisions.

5. As from the date of publication of a notification under clause (c) of section 4 in the Official Gazette of the State concerned,—

Effect of
division.

(a) every two-member constituency in the State (other than a two-member assembly constituency in the State of Gujarat) shall cease to exist and, in lieu thereof, there shall come into existence two single-member constituencies (hereinafter referred to as “the corresponding new constituencies”) as provided in the amended Delimitation Order;

(b) the sitting member of any two-member constituency in the State elected to fill the reserved seat therein shall be deemed

to have been elected to the House of the People or, as the case may be, to the State Legislative Assembly from that one of the corresponding new constituencies in which the seat has been reserved, and the other sitting member of that two-member constituency shall be deemed to have been elected from the other 5 of the corresponding new constituencies; and

(c) any casual vacancy existing immediately before the said date in any two-member constituency in the State shall, if it be in the reserved seat, be deemed to be a casual vacancy in that one of the corresponding new constituencies in which the seat 10 has been reserved, and if it be in the other seat, be deemed to be a casual vacancy in the other of the corresponding new constituencies.

Special provision
for Gujarat;
amendment
of section
19 of Act 11
of 1960.

6. (1) In section 19 of the Bombay Reorganisation Act, 1960,—

(a) in sub-section (2), for clause (b), the following clause 15 shall be substituted, namely:—

“(b) the assembly constituencies into which the State shall be divided, the extent of each of such constituencies and in which of them seats shall be reserved for the scheduled castes or for the scheduled tribes; and”; 20

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) In determining the matters referred to in clauses (b) and (c) of sub-section (2), the Election Commission shall have regard to the following provisions, namely:— 25

(a) all the constituencies shall be single-member constituencies;

(b) all the constituencies shall, as far as practicable, be geographically compact areas and in delimiting them regard shall be had to physical features, existing 30 boundaries of administrative units, facilities of communication and public convenience; and

(c) constituencies in which seats are reserved either for the scheduled castes or for the scheduled tribes shall, as far as practicable, be located in the areas in which the 35 population of the scheduled castes or, as the case may be, of the scheduled tribes is most concentrated, but in regard to scheduled castes, care should be taken to distribute the reserved seats in different areas of the State.”

11 of 1960.

7. (1) After all the notifications have been published under clause (c) of section 4 and the order referred to in sub-section (5) of section 19 of the Bombay Reorganisation Act, 1960, has been made, the Commission shall—

Revision of
the Delimit-
ation Order.

5 (a) make such further amendments in the Delimitation Order as appear to it to be necessary for bringing up-to-date the description of the extent of all constituencies and for better arranging the order in which they are set out in the Schedules to the Delimitation Order; and

10 (b) send authenticated copies of the Delimitation Order as so amended and revised to the Central Government and to each of the State Governments.

(2) As soon as may be after the revised Delimitation Order is received by the Central Government or a State Government, it shall
15 be laid before the House of the People or, as the case may be, before the Legislative Assembly of the State.

8. The Commission may from time to time, by notification published in the Gazette of India and in the Official Gazette of the State concerned,—

Power to
maintain
Delimitation
Order up-
to-date.

20 (a) correct any printing mistake in the revised Delimitation Order or any error arising therein from an inadvertent slip or omission, and

(b) where the boundaries or name of any district or any territorial division mentioned in a Schedule to the said Order are
25 or is altered, make such amendments as appear to it to be necessary or expedient for bringing the Schedule up-to-date.

STATEMENT OF OBJECTS AND REASONS

In pursuance of articles 330 and 332 of the Constitution, seats have been reserved for the Scheduled Castes and the Scheduled Tribes in the House of the People and the State Legislative Assemblies. Such reservation has generally been made in two-member constituencies, though in a few cases, seats have been reserved in single-member constituencies also. In each two-member constituency, one seat is reserved for the Scheduled Castes or, as the case may be, for the Scheduled Tribes.

2. There has been considerable criticism against the system of reservation of seats in two-member constituencies and the suggestion has often been made that all the seats reserved for the Scheduled Castes and the Scheduled Tribes should be provided for in single-member constituencies and that there should be no two-member constituencies at all. Members of Scheduled Castes and Tribes generally favour small single-member constituencies which involve less expenditure and trouble. Double-member constituencies are inconvenient and cumbersome from the administrative point of view also. It is, therefore, proposed to divide every two-member Parliamentary and Assembly constituency into two single-member constituencies, of which one should be reserved for the Scheduled Castes or, as the case may be, for the Scheduled Tribes. The Bill seeks to achieve this object.

A. K. SEN.

NEW DELHI;

The 16th December, 1960.

BILL NO. 92 OF 1960

A Bill to define and amend the law relating to certain kinds of specific relief.

BE it enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

PART I

PRELIMINARY

5 1. (1) This Act may be called the Specific Relief Act, 1960.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

10 2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "obligation" includes every duty enforceable by law;

39 of 1925.

15 (b) "settlement" means an instrument (other than a will or codicil as defined by the Indian Succession Act, 1925) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of;

3 of 1882.

(c) "trust" has the same meaning as in section 3 of the Indian Trusts Act, 1882, and includes an obligation in the nature of a trust within the meaning of Chapter IX of that Act;

20 (d) "trustee" includes every person holding property in trust;

9 of 1872.

(e) all other words and expressions used herein but not defined, and defined in the Indian Contract Act, 1872, have the meanings respectively assigned to them in that Act.

Savings.

3. Except as otherwise provided herein, nothing in this Act shall be deemed—

(a) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(b) to affect the operation of the Indian Registration Act, 1908, on documents.

16 of 1908.

Specific relief to be granted only for enforcing individual civil rights and not for enforcing penal laws.

4. Specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

PART II

10

SPECIFIC RELIEF

CHAPTER I

RECOVERING POSSESSION OF PROPERTY

Recovery of specific immovable property.

5. A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

5 of 1908

Recovery of specific movable property.

6. A person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

5 of 1908.

Explanation 1.—A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

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Explanation 2.—A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

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Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession.

7 Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;

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(b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

35

(d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Explanation.—Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under 5 clause (b) or clause (c) of this section, presume—

(a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;

(b) that it would be extremely difficult to ascertain the 10 actual damage caused by its loss.

CHAPTER II

SPECIFIC PERFORMANCE OF CONTRACTS

8. Except as otherwise provided herein, where any relief is claimed under this Chapter in respect of a contract, the person against 15 whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

Defences respecting suits for relief based on contract.

CONTRACTS WHICH CAN BE SPECIFICALLY ENFORCED

9. Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be 20 enforced—

Cases in which specific performance of contract enforceable.

(a) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation 25 in money for its non-performance would not afford adequate relief.

Explanation.—Unless and until the contrary is proved, the court shall presume—

(i) that the breach of a contract to transfer immovable 30 property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:—

(a) where the property is not an ordinary article of 35 commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff.

Cases in which specific performance of contracts connected with trusts enforceable.

10. (1) Except as otherwise provided in this Act, specific performance of a contract may, in the discretion of the court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

(2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

Specific performance of part of contract.

11. (1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency. 15

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

(a) forms a considerable part of the whole, though admitting of compensation in money; or 20

(b) does not admit of compensation in money; he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party— 25

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), the consideration for the whole of the contract without any abatement; and 30

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part. 35

Explanation.—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.

- 5 **12.** (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:—

Rights of purchaser or lessee against person with no title or imperfect title.

10 (a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

15 (b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

20 (c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary,

25 also a conveyance from the mortgagee;

30 (d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his absence of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs, on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

35 **CONTRACTS WHICH CANNOT BE SPECIFICALLY ENFORCED**

13. (1) The following contracts cannot be specifically enforced, namely:—

Contracts not specifically enforceable.

(a) a contract for the non-performance of which compensation in money is an adequate relief;

40 (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications

or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit. 10 of 1940

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—

(a) where the suit is for the enforcement of a contract,—

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is willing to repay at once: 20

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) a contract to take up and pay for any debentures of a company; 25

(b) where the suit is for,—

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) for the purchase of a share of a partner in a firm; 30

(c) where the suit is for the enforcement of a contract or the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:— 35

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

5 (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

10 PERSONS FOR OR AGAINST WHOM CONTRACTS MAY BE SPECIFICALLY ENFORCED

14. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

Who may obtain specific performance.

(a) any party thereto;

15 (b) the representative in interest or the principal, of any party thereto:

20 Provided that, where the learning, skill, solvency or any personal quality of such party, is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

25 (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

30 (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

35 (g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

Personal
bars to relief.

15. Specific performance of a contract cannot be enforced in favour of a person—

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

Contract to
sell or let
property by
one who has
no title, not
specifically
enforceable.

16. (1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor—

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

17. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely:—

(a) where by fraud, mistake of fact or mis-representation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract;

(b) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce;

(c) where the parties have, subsequently to the execution of the contract, varied its terms.

18. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

Non-enforcement except with variation.

Relief against parties and persons claiming under them by subsequent title.

DISCRETION AND POWERS OF COURT

Discretion
as to decre-
ing specific
performance.

19. (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and 5 capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other 10 circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, 15 whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance. 20

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). 25

Explanation 2.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time 30 of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance. 35

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

20. (1) In a suit for specific performance of a contract, the plaintiff may also claim for compensation for its breach, either in addition to, or in substitution of, such performance.

Power to award compensation in certain cases.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

21. (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

Power to grant relief for possession, partition, refund of earnest money, etc.

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made to him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 20.

Liquidation of damages not a bar to specific performance.

22. (1) A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

(2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

Bar of suit for compensation for breach after dismissal of suit for specific performance.

23. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

ENFORCEMENT OF AWARDS AND DIRECTIONS TO EXECUTE SETTLEMENTS

Application of preceding sections to certain awards and testamentary directions to execute settlements.

24. The provisions of this Chapter as to contracts shall apply to awards to which the Arbitration Act, 1940, does not apply and to directions in a will or codicil to execute a particular settlement.

CHAPTER III

RECTIFICATION OF INSTRUMENTS

When instrument may be rectified.

25. (1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act, 1956, applies) does not express their real intention, then—

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct
5 rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the
10 court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:

Provided that where a party has not claimed any such relief in
15 his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

CHAPTER IV

RESCISSION OF CONTRACTS

20 26. (1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely:— When rescission may be adjudged or refused.

(a) where the contract is voidable or terminable by the plaintiff;

25 (b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

(2) Notwithstanding anything contained in sub-section (1), the court may refuse to rescind the contract—

30 (a) where the plaintiff has expressly or impliedly ratified the contract; or

(b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when
35 the contract was made; or

(c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or

(d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

Explanation.—In this section “contract”, in relation to the territories to which the Transfer of Property Act, 1882, does not extend, means a contract in writing.

4 of 1882-

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Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.

27. (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

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(2) Where the contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

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(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

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(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.

28. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Alternative prayer for rescission in suit for specific performance.

29. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.

Court may require parties rescinding to do equity.

CHAPTER V

CANCELLATION OF INSTRUMENTS

30. (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

When cancellation may be ordered.

16 of 1908. (2) If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

31. Where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.

What instruments may be partially cancelled.

32. (1) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require.

Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted.

(2) Where a defendant successfully resists any suit on the ground—

(a) that the instrument sought to be enforced against him in the suit is voidable, the court may, if the defendant has received

as being void or voidable.

any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;

(b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to 5 contract under section 11 of the Indian Contract Act, 1872, the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby. 10 9 of 1872.

CHAPTER VI

DECLARATORY DECREES

Discretion of court as to declaration of status or right.

33. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court 15 may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. 20

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Effect of declaration.

34. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, 25 where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

PART III

PREVENTIVE RELIEF

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CHAPTER VII

INJUNCTIONS GENERALLY

relief how granted.

35. Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

Temporary and perpetual injunctions.

36. (1) Temporary injunctions are such as are to continue until a 35 specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908.

5 of 1908.

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant 40 is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER VIII

PERPETUAL INJUNCTIONS

37. (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. Perpetual injunction when granted.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—

(a) where the defendant is trustee of the property for the plaintiff;

15 (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

20 38. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. Mandatory injunction.

25 39. (1) The plaintiff in a suit for perpetual injunction under section 37, or mandatory injunction under section 38, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages. Damages in lieu of, or in addition to, injunction.

30 (2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint:

Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

35 (3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

Injunction
when
refused.

40. An injunction cannot be granted—

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings; 5

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body; 10

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance; 15

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust; 20

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.

Injunction to
perform a
negative
agreement.

41. Notwithstanding anything contained in clause (e) of section 25 25
40, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: 30

Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

Amendment
of Act 10 of
1940.

42. In section 32 of the Arbitration Act, 1940, after the words "nor shall any arbitration, agreement or award be", the word "enforced" shall be inserted. 35

Repeal

43. The Specific Relief Act, 1877, is hereby repealed.

1 of 1877.

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to implement the recommendations of the Law Commission contained in its Ninth Report on the Specific Relief Act, 1877, except in regard to section 42 which is being retained as it now stands. The notes on clauses, extracted from the Report of the Law Commission, explain the changes made in the existing Act.

ASOKE K. SEN.

NEW DELHI;

The 3rd December, 1960.

Notes on clauses

Clause 2.—The definition of trust in the existing Act is not satisfactory inasmuch as it refers to express, implied and constructive trusts without defining them. The expression is now being defined as in the Indian Trusts Act, 1882, as there should be parity between the two enactments. Consequential changes have been made in the definition of trustee.

Clause 3. (Existing section 4).—Clause (a) of existing section 4 has been omitted as unnecessary. Under section 2(h) of the Indian Contract Act, 1872, only an agreement enforceable by law is a contract. A mere agreement is not enforceable in law. In view of clause 2(e) of the Bill, clause (a) of section 4 is unnecessary. (See also notes under clause 8).

The existing sections 5 and 6 have been omitted as being too elementary. Section 9 has been omitted for the reasons given in paragraph 16 of the Report of the Law Commission.

Clause 4. (Existing section 7).—Instead of being cast in the negative form as at present, the revised clause brings out the principle more clearly by saying that specific relief being a civil remedy, the plaintiff must show some individual right to it in every case.

Clauses 5 and 6 reproduce existing sections 8 and 10 with the substitution of the word “provided” for the word “prescribed” in both the sections.

Clause 7. (Existing section 11).—An Explanation modelled on the Explanation to the existing section 12, is added whereby the burden of proving that the case does not fall within clause (b) or clause (c) is laid on the defendant. In such cases it should be for the defendant to prove that the article in respect of which possession is claimed is an ordinary article of commerce having no special value or interest to the plaintiff or that the damage is assessable in money.

Clause 8.—This is new. In India the defences that are available under the law of contract, such as, incapacity of parties, absence of a concluded contract, the uncertainty of the contract, coercion, fraud, mis-representation, mistake, illegality or want of authority are all dealt with under the Contract Act. Clause 8 prescribes in a

compendious way all the defences that are open to a defendant; and incidentally makes the existing section 4(a), which has now been omitted, all the more unnecessary.

Clause 9. (Existing section 12).—Clause (a) of existing section 12 which refers to an obligation arising out of a trust is now being incorporated in clause 10 with the other provision relating to trusts now to be found in section 21(e).

Clause (d) of the existing section 12 seems to sanction the doubtful doctrine that insolvency of the defendant is a ground for decreeing specific performance. It is totally inconsistent with the principle followed in the grant of specific relief, namely, the non-existence or inadequacy of the remedy at law, but not merely the impracticability of enforcing such a remedy. It is, therefore, being omitted.

The Explanation is being amended so as to specify the exceptional cases where courts in India and in England grant specific performance of contracts to transfer movable property on the presumption that damages would not in such cases give adequate relief. The exception as respects goods not easily obtainable in the market has been engrafted from American law where courts have enforced specific performance of contracts to furnish gas, water or other necessary materials to a manufacturing establishment where the thing contracted for is not immediately available from other sources and a breach of contract would stop the operations of the plaintiff's establishment.

Clause 10.—The provisions relating to trusts now found in section 12(a) and section 21(e) are being grouped together. Section 12(a) is out of place in that section as that section relates to executory contracts whereas in the case of an obligation arising out of a trust it arises out of an executed contract.

Clause 11.—Sections 14 to 17 deal with claims for specific relief of a part of a contract and section 13 enshrines a principle generally applicable to cases falling within sections 14 to 17. All these sections have now been grouped together.

Sub-clause (1) corresponds to section 17.

Sub-clause (2) corresponds to section 14.

Sub-clause (3) corresponds to section 15.

But one important change which has been made in sub-clause (3) is that when the part which must be left unperformed forms a considerable portion of the whole but admits of compensation in money, the plaintiff is allowed a proportionate abatement of the consideration when he is to relinquish all claims to further performance or any further compensation for the breach. In this respect the existing position is inequitable.

Sub-clause (4) corresponds to section 16.

The Explanation reproduces section 13 with verbal changes.

Clause 12.—This is section 18 of the existing Act with the following amendments:—

(a) it is made clear that this clause applies also to absence of title;

(b) by inserting the words “subject to the other provisions of this Chapter”, it is made clear that other provisions of this Chapter, like clause 11, apply to cases under sub-clause (a);

(c) in sub-clause (a), for the words “sale or lease”, the word “contract” has been substituted so that it is made clear that the sub-clause applies only to contracts to sell, lease or hire;

(d) sub-clause (b) is modified so that a plaintiff would also be enabled to require a vendor to get a conveyance from a person who is bound to convey at the request of the vendor;

(e) in sub-clause (c) the addition of the words “wherever necessary” makes it clear that a re-conveyance need be obtained only when it is required under law.

Clause 13.—This is section 21 of the existing Act with the following amendments:—

(i) in sub-clause (1), clause (c) of section 21 has been omitted as unnecessary in view of section 29 of the Indian Contract Act, 1872;

(ii) clause (f) of section 21 has been omitted in view of clause 8 of the Bill;

(iii) in item (d), the word 'determinable' has been substituted for the word 'revocable' as the expression 'revocable contract' is not accurate;

(iv) clause (e) of section 21 has been incorporated in clause 12 of the Bill;

(v) in item (d) [clause (g) of section 21] the limit of three years, which is artificial and arbitrary, has been omitted, and the proper rule applicable in such cases substituted;

(vi) sub-clause (3) is new and incorporates the exceptional cases in which specific performance is granted, notwithstanding the provisions of sub-clause (1).

Clause 14.—This clause reproduces section 23 with the following modifications—

(i) in sub-clause (b) it is made clear that, in a contract of a personal nature, performance by a third party is not to be imposed on the other party to the contract except where he has accepted such substituted performance;

(ii) sub-clauses (c), (d), (e) and (f) could be substituted by a simple provision providing that a third party to a contract who is entitled to a benefit thereunder or has an interest therein may sue on the contract subject to certain limitations. This substitution would, however, have to await a suitable amendment being made in this behalf in the Contract Act, and the clauses have been reproduced as they stand for the time being;

(iii) in sub-clauses (g) and (h) the word 'public' has been omitted since the nature of these provisions is such that they should apply to all companies. Further in sub-clause (h) it is provided that the contract would be enforceable by or against a company only if it has accepted the contract and has signified its acceptance to the other party to the contract.

Clause 15.—This is section 24 of the existing Act with the following modifications:—

(i) in sub-clause (a) for the words “is not entitled”, the words “would not be entitled” have been substituted in order to make the meaning clear;

(ii) in sub-clause (b), following the principles enunciated by case-law, it has been provided that specific performance cannot be enforced where the plaintiff has acted in fraud of the contract or acts at variance with or in subversion of the relationship intended to be established by the contract;

(iii) clause (c) of section 24 has been omitted as unnecessary in view of Order II, r. 2 of the Code of Civil Procedure, 1908;

(iv) clause (d) of existing section 24 gives effect to a provision of English law as it stood under a Statute of the sixteenth century, but the law has since been changed. A prior settlement of property would divest the title of the settlor immediately and any conveyance thereafter from the settlor to another, even if it be for consideration, would be ineffective to convey any title. This provision is therefore totally unnecessary;

(v) sub-clause (e) is a new provision which incorporates the principles laid down by case-law that in a suit for specific performance the plaintiff must show that all conditions precedent have been fulfilled and also allege and prove a continuous readiness and willingness to perform the contract on his part from the date of the contract to the time of hearing of the suit. The plaintiff, however, need not prove performance or over-readiness or willingness to perform non-essential terms;

(vi) by an Explanation it is made clear that it is not essential that the plaintiff should tender money payable under a contract, say, for sale to the defendant or to deposit it in court except when so directed. Further, the plaintiff should be entitled to specific performance if he avers performance or readiness or willingness to perform the contract according to its true construction.

Clause 16.—This is section 25 of the existing Act with the following modifications:—

Clause (c) of section 25 is omitted for the reasons given against clause 15 in respect of the omission of clause (d) of section 24.

Although section 25 refers to both movable and immovable property, it is not clear how far sections 18 and 25 apply to contracts for the letting of movable property. Sub-clause (1) is therefore confined to immovable property, but sub-clause (2) provides [as in the case of clause 12(2)] that the provisions of sub-clause (1) will also apply to movable property in so far as such application is possible.

Clause 17.—Clause 17 is section 26 with the following changes:—

(i) sub-clause (a) amalgamates clauses (a), (b) and (c) of section 26;

(ii) in sub-clause, (c) for the words “contracted to vary”, the words “varied its terms” have been substituted as a drafting change.

Clause 18 is section 27 of the existing Act with the following changes:—

(i) in sub-clause (d), the word “public” has been omitted as this provision should apply to all companies;

(ii) sub-clause (e) has been modified on the lines proposed in respect of section 23(h). [See notes under clause 14(h)].

Clause 19.—This clause reproduces section 22 of the Act with the following modifications—

(i) sub-section (2) (a) is item I of section 22. The existing provision is somewhat vague. There are circumstances in which a court of equity refuses to decree specific performance on the ground of unfairness even though in law the circumstances are not such as to render the contract voidable. The scope of this sub-clause is therefore widened to provide that the unfair advantage may be due to circumstances which may not be sufficient to render the contract voidable;

(ii) the two Explanations based on case-law seek to explain in what cases unfair advantage or hardship shall not be presumed and with reference to what circumstances hardship should ordinarily be determined;

(iii) the doctrine that a contract to be specifically enforceable must as a general rule be mutual has now very little scope for application in India. That doctrine is now being abolished and in its place, the following principle is laid down, namely, that the fact that the remedy of specific enforcement is not available to one party is not a sufficient reason for refusing it to the other party.

Sub-clause (4) gives effect to this new principle.

Clause 20.—This is section 19 of the existing Act with the following changes:—

(i) sub-clause (4) makes it clear that the compensation to be awarded is to be determined on the basis of section 73 of the Indian Contract Act, 1872;

(ii) it is provided in sub-clause (5) that compensation has to be specifically asked for before it can be granted, and that the court should allow the plaintiff to amend his plaint at any stage of the proceeding for the purpose.

Clause 21.—Clause 21 is new. Sub-clause (1) (a) introduces a rule, now settled by judicial decisions, that in order to avoid a multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking the right to possession accrues only when specific performance is decreed.

In some cases it has been held that the court may, in a suit for specific performance, direct a refund of earnest money while refusing specific performance if the facts disclose a case for such a refund. Sub-clause (b) gives effect to this and also permits the plaintiff to claim any other relief.

It is, however, provided that any such relief will not be granted unless a claim in that behalf is made by the plaintiff either initially

or by an amendment at a later stage, but that does not prejudice his right to compensation under clause 20.

Clause 22.—This is section 20 of the existing Act amplified so as to codify the law on the subject. In applying section 20 courts have tried to ascertain the intention of the parties, that is, whether the party bound to performance has an alternative choice given to him by the contract, to perform or to pay the agreed sum; or whether he is bound to do a certain thing, with a penal sum or sum by way of liquidated damages attached as security. In the latter case, the court, notwithstanding the penal clause, enforces performance if the contract be such that without the penal clause it would have been proper to enforce specific performance.

Clause 23 is section 29 of the existing Act. Provisions have been included in the Bill enabling the plaintiff to ask for reliefs such as refund of earnest money, etc., and by way of abundant caution it is made clear in this clause that the dismissal of a suit for specific performance shall not bar a suit for any relief other than damages.

Clause 24 is section 30 of the existing Act. After the passing of the Arbitration Act, 1940, the provisions of this clause should be confined to cases of arbitration under other laws the operation of which is saved by sections 46 and 47 of the Arbitration Act, 1940. As respects cases to which the Arbitration Act, 1940, applies, that Act prescribes the procedure to be followed for their enforcement.

Section 27A of the existing Act is omitted for the reason that suitable provision is being made in this behalf in the Registration Act and section 28 has been omitted for the reason the material provisions thereof have been incorporated in their appropriate places in the Bill.

Clause 25.—This is section 31 of the existing Act with the following modifications:—

(i) under section 31 of the Companies Act, 1956, the articles of association of a company may be altered by the company by special resolution, and it is, therefore, advisable to exclude articles of association from the scope of this clause;

(ii) it is provided in sub-clause (1) that the relief of rectification may be obtained not only in a suit specifically brought for

the purpose as at present, but also in a suit in which any right arising under the contract or other instrument is in issue. It is further provided that the relief will be open to either party but only if it is specifically asked for in his pleading whether initially or by amendment;

(iii) section 32 of the existing Act has been omitted as it is ambiguous; and if it means that the court will not rectify an invalid instrument, it is not necessary;

(iv) section 33 of the existing Act has been omitted as unnecessary as this provision seeks to merely enjoin the court to discover the real intention of the parties. In any event, clause 25 of the Bill renders this section unnecessary;

(v) section 34 of the existing Act has been incorporated in sub-clause (3).

Clause 26.—This is section 35 of the existing Act with the following modifications:—

(i) section 35(c) of the existing Act and the two paragraphs succeeding it have been omitted in view of clause 27 of this Bill; otherwise sub-clause (1) is a reproduction of section 35;

(ii) sub-clause (2) codifies the principles followed by courts in refusing to rescind a contract;

(iii) the requirement of "writing at the beginning of section 35" has been omitted by the Transfer of Property Act, 1882, in relation to territories where that Act is in force; Hence the Explanation.

Clause 27.—This is new. Under section 35(c) of the existing Act, the vendor or lessor has the option of bringing a separate suit for the rescission of a contract or to apply for rescission in the same suit under the third paragraph of that section, but there is no reason why the vendor or lessor should be allowed to harass the other party in a separate proceeding when the relief of rescission can be made available in the same suit. At the same time suitable reliefs should also be made available to the purchaser or lessee when he makes the payments due, but the vendor or lessor does not comply with the terms of the decree. The new clause therefore seeks to provide complete relief to both the parties in terms of the decree

for specific performance in the same suit without having to resort to separate proceedings.

Section 36 of the existing Act has been omitted as it is in conflict with section 22 of the Indian Contract Act, 1872, and does not appear to enshrine any sound principle.

Clause 28.—Clause 28 is section 37 of the existing Act.

Clause 29.—This is section 38 of the existing Act amplified to provide that while decreeing rescission the court might direct not only payment of compensation to the defendant but also restoration of any benefit received by the plaintiff under the contract.

Clause 30.—This is section 39 of the existing Act.

Clause 31.—This is section 40 of the existing Act.

Clause 32.—Under section 41 of the existing Act a plaintiff who obtains cancellation of an instrument may be required to make compensation to the defendant. This provision has been expanded to provide for the following matters:—

(i) the plaintiff may also have to restore any benefit which he may have obtained under the instrument;

(ii) the above principle has been extended to apply in favour of a plaintiff in a case where the defendant successfully resists a suit on the ground that it is void or that it is voidable and he has avoided it;

(iii) it is, however, provided that in the case of a contract, which is void by reason of the defendant being a minor or lunatic at the time of the contract, the defendant must restore any benefit, whether proprietary or monetary, which he has actually received under the contract. There is, however, no question of any liability for making compensation in such a case.

Clause 33.—This is section 42 of the existing Act.

Clause 34 is section 43 of the existing Act.

Clause 35.—This reproduces section 52 of the existing Act.

Clause 36.—This reproduces section 53 of the existing Act.

Clause 37.—This is section 54 of the existing Act with the following changes:—

(i) for the word “applicant”, the word “plaintiff” has been substituted as the former expression is inaccurate;

(ii) section 54(d) of the Act has been omitted for the reasons given against clause 9 in respect of the omission of section 12(d).

Clause 38.—This is section 55 of the existing Act.

Clause 39.—This clause is new and gives effect to the principles already accepted that the court can, in an action for injunction, exercise its discretion to award damages either in addition to or in substitution for an injunction.

Clause 40.—This is section 56 of the existing Act with the following changes:—

(i) the expression “to stay proceedings” in clauses (a), (b) and (c) of section 56 has given rise to a controversy as to whether any injunction can be directed against the court itself before which the proceeding is pending. An injunction is a remedy *in personam* which is directed against the litigant and this is now made clear;

(ii) section 56(d) has been omitted; the first part of it is inconsistent with article 361 (1) of the Constitution, and the second part is unnecessary.

Clause 41.—This is section 57 of the existing Act.

Clause 42.—This clause makes a consequential amendment in the Arbitration Act, 1940.

BILL NO. 95 OF 1960

A Bill to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith.

BE it enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

PART I

PRELIMINARY

5 1. (1) This Act may be called the Limitation Act, 1960.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

Short title,
extent and
commence-
ment.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

10 2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “applicant” includes—

(i) a petitioner,

(ii) any person from or through whom an applicant derives his right to apply,

15 (iii) any person whose estate is represented by the applicant as executor, administrator or other representative;

(b) “application” includes a petition;

(c) "bill of exchange" includes a hundi and a cheque;

(d) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

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(e) "defendant" includes—

(i) any person from or through whom a defendant derives his liability to be sued;

(ii) any person whose estate is represented by the defendant as executor, administrator or other representative;

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(f) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another;

(g) "foreign country" means any country other than India;

((h) "good faith": nothing shall be deemed to be done in good faith which is not done with due care and attention;

(i) "plaintiff" includes—

(i) any person from or through whom a plaintiff derives his right to sue;

(ii) any person whose estate is represented by the plaintiff as executor, administrator or other representative;

(j) "prescribed period" means the period of limitation prescribed for any suit, appeal or application by the Schedule and computed in accordance with the provisions of this Act;

(k) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight;

(l) "suit" does not include an appeal or an application;

30

(m) "tort" means a civil wrong which is not exclusively the breach of a contract or the breach of a trust;

(n) "trustee" does not include a *benamidar*, a mortgagee remaining in possession after the mortgage has been satisfied or a person in wrongful possession without title.

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PART II

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

3. (1) Subject to the provisions contained in sections 4 to 23 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Bar of limitation.

(2) For the purposes of this Act,—

(a) a suit is instituted,—

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of set off or counter claim, which shall be treated as a separate suit, shall be deemed to have been instituted—

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

4. Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens. Expiry of prescribed period when court is closed.

5. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Extension of prescribed period in certain cases.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

Legal disability.

6. (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column 10 of the Schedule.

(2) Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same 15 period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

(3) Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have 20 been allowed from the time so specified.

(4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply. 25

(5) Where a person under disability dies after the disability ceases but within the period of limitation allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been available to that person had he not died. 30

Disability of one of several persons.

7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of 35 them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I.—This section applies to a discharge from every kind of liability, including a liability in respect of any immovable 40 property.

Explanation II.—For the purposes of this section, a discharge from liability can be given by the manager of a Hindu undivided family governed by the Mitakshara law without the concurrence of the other members of the family only if he is both the *de jure* and *de facto* manager of the family.

8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the prescribed period for any suit or application. Special exceptions.

9. Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it: Continuous running of time.

15 Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the prescribed period for a suit to recover the debt shall be suspended while the administration continues.

20 10. Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Suits against trustees and their representatives.

25 *Explanation.*—For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.

30 11. (1) Suits instituted in the territories to which this Act extends on contracts entered into in a foreign country shall be subject to the rules of limitation contained in this Act. Suits on foreign contracts.

(2) No foreign rule of limitation shall be a defence to a suit instituted in the said territories on a contract entered into in a foreign country unless the rule has extinguished the contract and the parties 35 were domiciled in such country during the period prescribed by such rule.

(3) This section applies to contracts entered into in the State of Jammu and Kashmir as it applies to contracts entered into in a foreign country.

PART III

COMPUTATION OF PERIOD OF LIMITATION

Exclusion of
time in legal
proceedings.

12. (1) In computing the prescribed period for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

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(2) In computing the prescribed period for an appeal or an application for leave to appeal or for revision or for review of a judgment the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

(4) In computing the prescribed period for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

Exclusion of
time of pro-
ceeding *bona*
fide in court
without
jurisdiction.

13. (1) In computing the prescribed period for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a court of appeal or revision against the defendant, shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

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(2) In computing the prescribed period for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason

5 of 1908.

of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

5 (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

10 (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

14. (1) In computing the prescribed period for any suit or appli-
cation for the execution of a decree, the institution or execution of
which has been stayed by injunction or order, the time of the con-
tinuance of the injunction or order, the day on which it was issued
15 or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of
time in
certain other
cases.

(2) In computing the prescribed period for any suit of which
notice has been given, or for which the previous consent or sanction
of the Government or any other authority is required, in accordance
with the requirements of any law for the time being in force, the
20 period of such notice or, as the case may be, the time required for
obtaining such consent or sanction shall be excluded.

Explanation.—In excluding the time required for obtaining the
consent or sanction of the Government or any other authority, the
date on which the application was made for obtaining the consent or
25 sanction and the date of receipt of the order of the Government or
other authority shall both be counted.

(3) In computing the prescribed period for any suit or applica-
tion for execution of a decree by any receiver or *interim* receiver
appointed in proceedings for the adjudication of a person as an insol-
30 vent or by any liquidator or provisional liquidator appointed in pro-
ceedings for the winding up of a company, the period beginning with
the date of institution of such proceeding and ending with the expiry
of three months from the date of appointment of such receiver or
liquidator, as the case may be, shall be excluded.

35 (4) In computing the prescribed period for a suit for possession
by a purchaser at a sale in execution of a decree, the time during
which a proceeding to set aside the sale has been prosecuted shall be
excluded.

(5) In computing the prescribed period for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded.

Effect of
death or
before the
accrual of
the right
to sue.

15. (1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit or make an application accrues only on the death of a person, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application. 5 10

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death of such person, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute such suit or make such application. 15

(3) Nothing in sub section (1) or sub-section (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of a hereditary office. 20

Effect of
fraud or
mistake.

16. (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or 25

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or 30

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;

the prescribed period shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production. 35

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the prescribed period, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the prescribed period for execution of the decree or order:

Provided that such application for extension of the prescribed period is made within one year from the discovery of the fraud or the cessation of force, as the case may be.

17. (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

Effect of acknowledgment in writing.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

1 of 1872.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver,

perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

5

(c) an application* for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

Effect of payment on account of debt or of interest on legacy.

18. Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—For the purposes of this section,—

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a court.

Effect of acknowledgment or payment by another person.

19. (1) The expression "agent duly authorised in this behalf" in sections 17 and 18 shall, in the case of a person under disability, include his lawful guardian, committee or manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent of, any other or others of them.

(3) For the purposes of the said sections,—

(a) an acknowledgment signed or a payment made in respect of any liability by, or by the duly authorised agent of, any limited owner of property who is governed by Hindu law, shall be a valid acknowledgment or payment, as the case may be, against a reversioner succeeding to such liability; and

(b) where a liability has been incurred by, or on behalf of a Hindu undivided family as such, an acknowledgment or

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payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

20. (1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Effect of substituting or adding new plaintiff or defendant.

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

- (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

21. In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

Continuing breaches and torts.

22. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the prescribed period shall be computed from the time when the injury results.

Suits for compensation for acts not actionable without special damage.

23. All instruments shall for the purposes of this Act be deemed to be made with reference to the Gregorian calendar.

Computation of time mentioned in instruments.

PART IV

ACQUISITION OF OWNERSHIP BY POSSESSION

24. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years, and where any way or watercourse or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years, the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Acquisition of easements by prescription.

(2) Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(3) Where the property over which a right is claimed under sub-section (1) belongs to the Government that sub-section shall be read as if for the words "twenty years" the words "thirty years" were substituted.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

Exclusion in favour of reversioner of servient tenement.

25. Where any land or water upon, over or from, which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or in terms of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled on such determination to the said land or water.

Extinguishment of right to property.

26. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

PART V

MISCELLANEOUS

Amendment of certain Acts.

27. In the Indian Easements Act, 1882, in section 15, for the words "sixty years", the words "thirty years" shall be substituted; and in the Code of Civil Procedure, 1908, section 48 shall be omitted.

5 of 1882.

5 of 1908.

Savings.

28. (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872.

9 of 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the prescribed period, the provisions of section 3 shall apply as if such

period were the prescribed period, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 23 (inclusive) shall apply only in so far as, and to the extent 5 to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

10 (4) Sections 24 and 25 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882, may for the time being extend.
5 of 1882.

29. Notwithstanding anything contained in this Act,—

15 (a) any suit for which the prescribed period is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of two years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier:
9 of 1908.

Provision for suits, etc., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908.

20 Provided that a suit to redeem or recover possession of any immovable property which has been mortgaged may be instituted within a period of twelve years next after such commencement or within a period of thirty years from the date of accrual of the right to redeem or recover possession, whichever period expires later;
25

(b) any appeal or application for which the prescribed period is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be preferred or made within a period of thirty days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier.
30

30. Nothing in this Act shall,—

35 (a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908, expired before the commencement of this Act; or
9 of 1908.

Provisions as to barred or pending suits, etc.

(b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement.

9 of 1908. 40 31. The Indian Limitation Act, 1908, is hereby repealed.

Repeal.

THE SCHEDULE

(PRESCRIBED PERIODS)

[See sections 2 (j) and 3]

FIRST DIVISION—SUITS

Description of suit	Period of limitation	Time from which period begins to run	
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PART I.—SUITS RELATING TO ACCOUNTS

1 For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years.	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.	10
2 Against a factor for an account.	Three years.	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.	15
3 By a principal against his agent for movable property received by the latter and not accounted for.	Three years.	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.	20 25
4 Other suits by principals against agents for neglect or misconduct.	Three years.	When the neglect or misconduct becomes known to the plaintiff.	
5 For an account and a share of the profits of a dissolved partnership.	Three years.	The date of the dissolution.	30

PART II.—SUITS RELATING TO CONTRACTS

6 For a seaman's wages . . .	Three years.	The end of the voyage during which the wages are earned.	35
7 For wages in the case of any other person.	Three years.	When the wages accrue due.	
8 For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	Three years.	When the food or drink is delivered.	40
9 For the price of lodging.	Three years.	When the price becomes payable.	

	Description of suit	Period of limitation	Time from which period begins to run
5	10 Against a carrier for compensation for losing or injuring goods.	Three years.	When the loss or injury occurs.
	11 Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	Three years.	When the goods ought to be delivered.
10	12 For the hire of animals, vehicles, boats or household furniture.	Three years.	When the hire becomes payable.
15	13 For the balance of money advanced in payment of goods to be delivered.	Three years.	When the goods ought to be delivered.
	14 For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Three years.	The date of the delivery of the goods.
20	15 For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years.	When the period of credit expires.
25	16 For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Three years.	When the period of the proposed bill elapses.
30	17 For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years.	The date of the sale.
35	18 For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years.	When the work is done.
	19 For money payable for money lent.	Three years.	When the loan is made.
40	20 Like suit when the lender has given a cheque for the money.	Three years.	When the cheque is paid.
45	21 For money lent under an agreement that it shall be payable on demand.	Three years.	When the loan is made.
50	22 For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Three years.	When the demand is made.

Description of suit	Period of limitation-	Time from which period begins to run
23 For money payable to the plaintiff for money paid for the defendant.	Three years.	When the money is paid. 5
24 For money payable by the defendant to the plaintiff for money received by the defendant, for the plaintiff's use.	Three years.	When the money is received. 10
25 For money payable for interest upon money due from the defendant to the plaintiff.	Three years.	When the interest becomes due.
26 For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years.	When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives. 15 20
27 For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years.	When the time specified arrives or the contingency happens. 25
28 On a single bond, where a day is specified for payment.	Three years.	The day so specified. 30
29 On a single bond, where no such day is specified.	Three years.	The date of executing the bond.
30 On a bond subject to a condition.	Three years.	When the condition is broken. 35
31 On a bill of exchange or promissory note payable at a fixed time after date.	Three years.	When the bill or note falls due.
32 On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Three years.	When the bill is presented. 40
33 On a bill of exchange accepted payable at a particular place.	Three years.	When the bill is presented at that place.
34 On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years.	When the fixed time expires. 45

	Description of suit	Period of limitation	Time from which period begins to run
35	On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to use.	Three years.	The date of the bill or note.
5			
10	36 On a promissory note or bond payable by instalments.	Three years.	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.
15	37 On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.	Three years.	When the default is made, unless where the payee or obligee waives the benefit of the provision and then when fresh default is made in respect of which there is no such waiver.
20			
25	38 On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years.	The date of the delivery to the payee.
30	39 On a dishonoured foreign bill where protest has been made and notice given.	Three years.	When the notice is given.
	40 By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	Three years.	The date of the refusal to accept.
35	41 By the acceptor of an accommodation-bill against the drawer.	Three years.	When the acceptor pays amount of the bill.
	42 By a surety against the principal debtor.	Three years.	When the surety pays the creditor.
40	43 By a surety against a co-surety.	Three years.	When the surety pays anything in excess of his own share.
45	44 (a) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	Three years.	The date of the death of the deceased.
50	(b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.		The date of the occurrence causing the loss.
55	45 By the assured to recover premium paid under a policy voidable at the election of the insurers.	Three years.	When the insurers elect to avoid the policy.

39 of 1925.

Description of suit	Period of limitation	Time from which period begins to run
46 Under the Indian Succession Act, 1925, section 360 or section 361, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years.	The date of the payment or distribution. 5
47 For money paid upon an existing consideration which afterwards fails.	Three years.	The date of the failure. 10
48 For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Three years.	The date of the payment in excess of the plaintiff's own share. 15 20
49 By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years.	When the right to contribution accrues. 25
50 By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Three years.	The date of the payment. 30
51 For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years.	When the profits are received. 35
52 For arrears of rent.	Three years.	When the arrears become due.
53 By a vendor of immovable property for personal payment of unpaid purchase-money.	Three years.	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. 40
54 For specific performance of a contract.	Three years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. 45
55 For compensation for the breach of any contract, express or implied not herein specially provided.	Three years.	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases. 50 55

Description of suit	Period of limitation	Time from which period begins to run
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PART III.—SUITS RELATING TO DECLARATIONS

5	56 To declare the forgery of an instrument issued or registered.	Three years.	When the issue or registration becomes known to the plaintiff.
10	57 To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Three years.	When the alleged adoption becomes known to the plaintiff.
	58 To obtain any other declaration.	Three years.	When the right to sue first accrues.

PART IV.—SUITS RELATING TO DECREES AND INSTRUMENTS

15	59 To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
20	60 To set aside a transfer of property made by the guardian of a ward—		
	(a) by the ward who has attained majority;	Three years.	When the ward attains majority.
25	(b) by the ward's legal representative—		
	(i) when the ward dies within three years from the date of attaining majority;	Three years.	When the ward attains majority.
30	(ii) when the ward dies before attaining majority.	Three years.	When the ward dies.

PART V.—SUITS RELATING TO IMMOVABLE PROPERTY

61	By a mortgagor—		
35	(a) to redeem or recover possession of immovable property mortgaged;	Thirty years.	When the right to redeem or to recover possession accrues.
40	(b) to recover possession of immovable property mortgaged and afterwards transferred by the mortgagee for a valuable consideration.	Twelve years.	When the transfer becomes known to the plaintiff.
45	(c) to recover surplus collections received by the mortgagee after the mortgage has been satisfied.	Three years.	When the mortgagor re-enter on the mortgaged property.

Description of suit	Period of limitation	Time from which period begins to run
62 To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years.	When the money sued for becomes due. 5
63 By a mortgagee:—		
(a) for foreclosure;	Thirty years.	When the money secured by the mortgage becomes due. 10
(b) for possession of immovable property mortgaged.	Twelve years.	When the mortgagee becomes entitled to possession. 10
64 For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years.	The date of dispossession. 15
65 For possession of immovable property or any interest therein based on title.	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff. 20
<i>Explanation.</i> —For the purposes of this article—		
(a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession ;		25 30 35
(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies ;		40 45
(c) where the suit is by a purchaser at a sale in execution of a decree when the judgement-debtor was out of possession at the date of the sale, the purchaser shall be deemed		50

	Description of suit	Period of limitation	Time from which period begins to run
5	to be a representative of the judgement-debtor who was out of possession.		
66	For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years.	When the forfeiture is incurred or the condition is broken.
10			
67	By a landlord to recover possession from a tenant.	Twelve years.	When the tenancy is determined.

PART VI.—SUITS RELATING TO MOVABLE PROPERTY

15	68 For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion.	Three years.	When the person having the right to the possession of the property first learns in whose possession it is.
20	69 For other specific movable property.	Three years.	When the property is wrongfully taken.
	70 To recover movable property deposited or pawned from a depositary or pawnee.	Three years.	The date of refusal after demand.
25	71 To recover movable property deposited or pawned, and afterwards bought from the depositary or pawnee for a valuable consideration.	Three years.	When the sale becomes known to the plaintiff.

PART VII.—SUITS RELATING TO TORT

30	72 For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends.	One year.	When the act or omission takes place.
35			
	73 For compensation for false imprisonment.	One year.	When the imprisonment ends.
40	74 For compensation for a malicious prosecution.	One year.	When the plaintiff is acquitted or the prosecution is otherwise terminated.
	75 For compensation for libel.	One year.	When the libel is published.
	76 For compensation for slander.	One year.	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
45			
	77 For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year.	When the loss occurs.
50			

Description of suit	Period of limitation	Time from which period begins to run
78 For compensation for inducing a person to break a contract with the plaintiff.	One year.	The date of the breach. 5
79 For compensation for an illegal, irregular or excessive distress.	One year.	The date of the distress.
80 For compensation for wrongful seizure of movable property under legal process.	One year.	The date of the seizure. 10
81 By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855.	One year.	The date of the death of the person wronged. 15 12 of 1855.
82 By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	One year.	The date of the death of the person killed. 13 of 1855.
83 Under the Legal Representatives' Suits Act, 1855 against an executor, an administrator or any other representative.	Two years.	When the wrong complained of is done. 20 12 of 1855.
84 Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years.	When the perversion first becomes known to the person injured thereby. 25
85 For compensation for obstructing a way or a watercourse.	Three years.	The date of the obstruction. 30
86 For compensation for diverting a watercourse.	Three years.	The date of the diversion.
87 For compensation for trespass upon immovable property.	Three years.	The date of the trespass. 35
88 For compensation for infringing copyright or any other exclusive privilege.	Three years.	The date of the infringement.
89 To restrain waste.	Three years.	When the waste begins. 40
90 For compensation for injury caused by an injunction wrongfully obtained.	Three years.	When the injunction ceases.
91 For compensation,— (a) for wrongfully taking or detaining any specific movable property lost, or acquired by theft, or dishonest mis-appropriation or conversion ;	Three years.	When the person having the right to the possession of the property first learns in whose possession it is. 45 50

	Description of suit	Period of limitation	Time from which period begins to run
5	(b) for wrongfully taking or injuring or wrongfully detaining any other specific movable property.	Three years.	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

PART VIII.—SUITS RELATING TO TRUSTS AND TRUST PROPERTY

10	92 To recover possession of immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.	Twelve years.	When the transfer becomes known to the plaintiff.
15	93 To recover possession of movable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.	Three years.	When the transfer becomes known to the plaintiff.
20	94 To set aside a transfer of immovable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years.	When the transfer becomes known to the plaintiff.
30	95 To set aside a transfer of movable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years.	When the transfer becomes known to the plaintiff.
40	96 By the manager of a Hindu, Muslim or Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years.	The date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment whichever is later.

PART IX.—SUITS RELATING TO MISCELLANEOUS MATTERS

50	97 To enforce a right of pre-emption whether the right is founded on law for general usage or on special contract.	[One year.]	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of
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Description of suit	Period of limitation	Time from which period begins to run
<p>98 By a person against whom an order under rule 63 or rule 103 of Order XXI of the Code of Civil Procedure, 1908 or an order under section 28 of the Presidency Small Cause Courts Act, 1882, has been made, to establish the right which he claims to the property comprised in the order.</p>	<p>One year.</p>	<p>physical possession of the whole or part of the property, when the instrument of sale is registered. 5</p> <p>The date of the final order.</p> <p>10 5 of 1908.</p> <p>15 15 of 1882.</p>
<p>99 To set aside a sale by a civil or revenue court or a sale for arrears of Government revenue or for any demand recoverable as such arrears.</p>	<p>One year.</p>	<p>When the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought. 20</p>
<p>100 To alter or set aside any decision or order of a civil court in any proceeding other than a suit or any act or order of an officer of Government in his official capacity.</p>	<p>One year.</p>	<p>The date of the final order. 25</p> <p>30</p>
<p>101 Upon a judgment, including a foreign judgment, or a recognisance.</p>	<p>Three years.</p>	<p>The date of judgment or recognisance.</p>
<p>102 For property which the plaintiff has conveyed while insane.</p>	<p>Three years.</p>	<p>When the plaintiff is restored to sanity and has knowledge of the conveyance. 35</p>
<p>103 To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.</p>	<p>Three years.</p>	<p>The date of the trustee's death or if the loss has not then resulted, the date of the loss. 40</p>
<p>104 To establish a periodically recurring right.</p>	<p>Three years.</p>	<p>When the plaintiff is first refused the enjoyment of the right.</p>
<p>105 By a Hindu for arrears of maintenance.</p>	<p>Three years.</p>	<p>When the arrears are payable. 45</p>
<p>106 For a legacy or for a share of a residue bequeathed by a testator or for a distributive share of the property of an intestate against an executor or an administrator or some other person legally charged with the duty of distributing the estate.</p>	<p>Twelve years.</p>	<p>When the legacy or share becomes payable or deliverable. 50</p>

	Description of suit	Period of limitation	Time from which period begins to run
5	107 For possession of a hereditary office.	Twelve years.	When the defendant takes possession of the office adversely to the plaintiff.
10	<i>Explanation.</i> —A hereditary office is possessed when the properties thereof are usually received, or (if there are no properties) when the duties thereof are usually performed.		
15	108 Suit during the life of a Hindu or Muslim female by a Hindu or Muslim who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Twelve years.	The date of the alienation.
20			
25	109 By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.	Twelve years.	When the alienee takes possession of the property.
30	110 By a person excluded from a joint family property to enforce a right to share therein.	Twelve years.	When the exclusion becomes known to the plaintiff.
35	111 By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years.	The date of the dispossession or discontinuance.
40			
45	112 Any suit by or on behalf of the Central Government or any State Government (except a suit before the Supreme Court in the exercise of its original jurisdiction).	Thirty years.	When the period of limitation would begin to run under this Act against a like suit by a private person.

PART X.—SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

50	113 Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years.	When the right to sue accrues.
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SECOND DIVISION—APPEALS

Description of appeal	Period of limitation	Time from which period begins to run
114 Appeal from an order of acquittal,—		5
(a) under sub-section (1) or sub-section (2) of section 417 of the Code of Criminal Procedure, 1898;	Ninety days.	The date of the order appealed from.
(b) under sub-section (3) of section 417 of that Code.	Thirty days.	The date of the grant of IO special leave.
115 Under the same Code to any court from a sentence or order not being an order of acquittal or under the Code of Civil Procedure, 1908, to any court from any decree or order.	Thirty days.	The date of the sentence, decree or order.
116 From a decree or order of any High Court to the same Court.	Thirty days.	The date of the decree or order.

THIRD DIVISION—APPLICATIONS

Description of application	Period of limitation	Time from which period begins to run
PART I.—APPLICATIONS IN SPECIFIED CASES		25
117 For leave to appear in, and defend a suit under summary procedure.	Ten days.	When the summons is served.
118 Under the Arbitration Act, 1940,—		30 10 of 1940.
(a) for the filing in court of an award;	Thirty days.	The date of service of the notice of the making of the award;
(b) for setting aside an award or getting an award remitted for reconsideration.	Thirty days.	The date of service of the notice of the filing of the award.
119 Under the Code of Civil Procedure, 1908, to have the legal representative of deceased plaintiff or appellant or of a deceased defendant or respondent, made a party.	Thirty days.	The date of death of the plaintiff, appellant, defendant or respondent as the case may be.
120 Under the same Code for an order to set aside an abatement.	Thirty days.	The date of abatement.

	Description of application	Period of limitation	Time from which period begins to run
5	121 To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	Thirty days.	The date of dismissal.
10	122 To set aside a decree passed <i>ex parte</i> or to rehear an appeal decreed or heard <i>ex parte</i> .	Thirty days.	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.
15	<i>Explanation.</i> —For the purpose of this article, substituted service under rule 20 of Order V of the Code of Civil Procedure, 1908 shall not be deemed to be due service.		
20	123 For a review of judgment by a court other than the Supreme Court.	Thirty days.	The date of the decree or order.
5 of 1908.	124 To record an adjustment or satisfaction of a decree.	Thirty days.	When the payment or adjustment is made.
	125 For the payment of the amount of a decree by instalments.	Thirty days.	The date of the decree.
	126 To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Thirty days.	The date of the sale.
35	127 For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days.	The date of the dispossession.
40	128 For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days.	The date of resistance or obstruction.
45	129 For leave to appeal as a pauper.	Thirty days.	The date of decree appealed from.
50	130 To any court for the exercise of its powers of revision under the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1898.	Thirty days.	The date of the decree or order or sentence sought to be revised.
5 of 1908.			
5 of 1898.	55		

Description of application	Period of limitation	Time from which period begins to run
131 To the High Court for a certificate of fitness to appeal to the Supreme Court under clause (i) of article 132, article 133 or sub-clause (c) of clause (i) of article 134 of the Constitution or under any other law for the time being in force.	Thirty days.	The date of the decree, order or sentence. 5 10
132 To the Supreme Court for special leave to appeal,— (a) in a case involving death sentence; (b) in a case where leave to appeal was refused by the High Court; (c) in any other case.	Thirty days. Sixty days. Ninety days.	The date of the judgment, final order or sentence. 15 The date of the order of refusal. The date of the judgment or order. 20
133 For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year.	When the sale becomes absolute.
134 For the enforcement of a decree granting a mandatory injunction.	Three years.	The date of the decree or where a date is fixed for performance, such date. 25
135 For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years.	Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: 30 35 40 45 Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
: PART II.—OTHER APPLICATIONS		
136 Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues. 50

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to implement the Third Report of the Law Commission on the Indian Limitation Act, 1908, with one important modification. While giving effect to the recommendations of the Commission as respects the re-arrangement of the articles contained in the First Schedule in accordance with their subject-matter and the rationalisation of the periods of limitation as far as possible, it is felt that it would be more advantageous to adhere to the existing scheme which in almost all cases indicates the specific point of time from which the period of limitation begins to run.

The notes on clauses explain in detail the provisions of the Bill.

NEW DELHI;

A. K. SEN,

The 15th December, 1960.

Notes on clauses

Clause 2.—A new definition of “application” is being inserted so as to include a petition, original or otherwise. The object is to provide a period of limitation for original applications and petitions under special laws as there is no such provision now. Consequential changes have been made in the definition of “applicant”.

The definitions of “plaintiff” and “defendant” as they stand in the present Act include a person from or through whom a plaintiff or defendant derives his right or liability to sue or to be sued. The object of this inclusive definition is to make it clear that the cause of action for a person in whom the right to sue is vested and the person on whom the right has subsequently devolved is one and the same. The position holds good in the case of executors, administrators and representatives also, and the inclusive definition is enlarged so as to make this position also clear.

The new definition of “prescribed period” will make it clear that the period of limitation specified in the Schedule will have to be computed in accordance with the provisions of the Act; that is to say, wherever they apply, the sections of the Act will have the effect of extending the periods of limitation specified in the Schedule.

Clause 3.—Sub-clause (2) (b) provides that a claim by way of set-off or counter-claim shall be treated as a separate suit and that, in the case of a set-off, time should cease to run from the date of the suit in which it is pleaded as the set-off arises out of the same transaction and should relate back to the date of the suit; and that in the case of a counter-claim, time should cease to run from the date on which the claim is made as it is really in the nature of a separate suit.

Sub-clause (2) (c) sets at rest the conflict of decisions as to when exactly time ceases to run in the case of an application by notice of motion. It is now provided that time ceases to run when notice of motion is made and not when the notice is taken up by the court—a view more favourable to the applicant.

Clause 5.—Instead of leaving it to the different States or High Courts to extend the application of section 5 to applications other

than those enumerated in that section as now in force, this clause provides for the automatic application of this section to all applications, other than those arising under Order XXI of the Code of Civil Procedure, 1908, relating to execution of decrees. In the case of special or local laws, it will be open to such laws to provide that section 5 will not apply.

Clause 6.—This reproduces section 6 of the existing Act with the following modifications:—

(a) In sub-clause (4), a clarificatory amendment is being made by the substitution of the words “at the date of the death of the person whom he represents” for the words “at the date of death affected by any such disability”;

(b) sub-clause (5), which is new, removes the conflict on the question whether, when a person under disability dies after the disability ceases but within the time allowed to him by law to institute a suit, his legal representative can take advantage of the extended period to the same extent as in the case where the disability of a person continues upto his death.

Clause 7.—The word “discharge” in the existing section 7 has been liberally interpreted by the courts to include all kinds of discharge, and not merely discharge of money claims. The Explanation is intended to make the position clear. It is also made clear that, in the case of the manager of a Hindu joint family governed by the Mitakshara law, his authority to give a valid discharge can be inferred only when he is both the *de jure* and *de facto* manager.

Clause 12.—The existing section 12 is being amended,—

(i) to include applications for revision within its scope;

(ii) to provide expressly that the time requisite for obtaining a copy of the judgment in the case of an application for leave to appeal is also to be excluded;

(iii) to make it clear that any delay in the office of the court in drawing up a decree or order before the application for a copy thereof is made, shall not be excluded.

Clause 13.—Clause 13 is section 14 of the existing Act with the following changes:—

In sub-clause (1) for the words “cause of action” the words “matter in issue” are being substituted as the former expression tends to make the relief too narrow.

In sub-clause (3), which is new, it is provided that if a suit or application is withdrawn under Order XXIII of the Code of Civil Procedure, 1908, on grounds similar to those specified in this clause, the time spent in prosecuting such proceedings shall be excluded. There is no justification for denying a litigant this right when the grounds of withdrawal are those contemplated by this clause and to this extent Order XXIII r. 2 requires to be superseded.

Incidentally, prior proceedings in a court of revision are also brought within the scope of this clause.

Clause 14.—In sub-clause (2) provision is made for excluding the time taken in obtaining the consent of the Central Government or any other authority for instituting any proceedings (for example, under sections 86 and 87 of the Code of Civil Procedure, 1908). Such cases are analogous to those which provide for statutory notices, the period of which is excluded by the existing section.

Sub-clause (3) is new. It is common knowledge that by the time a receiver or liquidator is appointed in insolvency or liquidation proceedings and the receiver or liquidator after getting information about the assets and liabilities of the estate sits down to the task of realising the assets of the estate, claims in favour of such estate or company get barred to the detriment of the persons entitled to the benefits of the assets. To avoid this hardship this sub-clause provides that the period between the filing of the petition for winding up or adjudication and the appointment of the receiver (including interim receiver) or liquidator (including a provisional liquidator) and a period of three months thereafter (to enable him to acquaint himself with the affairs of the estate) should be excluded.

Sub-clauses (4) and (5) reproduce sections 13 and 16 of the existing Act.

Clause 15.—Section 17 of the existing Act is confined to rights of action accruing after death. In *Meyappa v. Subramanya* (20 C.W.N. 833), the Privy Council observed that when the cause of action arises in favour of a deceased person after his death time will at once begin to run. Some courts have applied section 17 to cases where the right accrues on death as in the case of partnerships. The clause, as now proposed to be amended, will make it applicable to rights of action accruing on death or thereafter.

Clause 16.—Section 18 of the existing Act has been re-cast on the lines of section 26 of the Limitation Act, 1939, of the United Kingdom so as to include actions based on fraud and also for relief founded on mistake. The clause also seeks to afford suitable protection to purchasers for valuable consideration in all such cases.

Sub-clause (2) incorporates the principle contained in the proviso to section 48 of the Code of Civil Procedure, 1908, which now finds a place in this Bill (see article 135). The benefit is, however, made available only if the application for extension is made within one year from the date of discovery of the fraud or cessation of force.

Clause 17.—Under the Schedule as now proposed, the time limit of 12 years for execution applications would not be capable of extension and, therefore, Explanation (c) makes it clear that an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

Clause 18.—For the reasons stated against clause 17, the Explanation is amended to provide that the expression "debt" shall not include money payable under a decree or order of a court.

Clause 20.—The existing section 22 is being amended so that an omission to implead a person owing to a bonafide mistake does not deprive him of his rights against that person if the court is satisfied in that behalf.

Clauses 24 to 26.—The Law Commission has proposed that sections 26 and 27 of the existing Act, which deal with the acquisition of rights of easement by prescription, should be repealed and the Indian Easements Act, 1882 (the provisions of sections 15 and 16 of which correspond to sections 26 and 27 of the existing Act), should be extended to the territories to which sections 26 and 27 now apply. The Indian Easements Act, 1882, extends only to a few States, but as the pith and substance of that Act relates to rights in or over land (an entry in the State List) it is not possible by a Parliamentary law to extend that Act to the remaining parts of India to which it does not now extend. Hence clauses 24 and 25 seek to continue the operation of sections 26 and 27 of the existing Act. As and when the Indian Easements Act, 1882, is made applicable to any State by State legislation, sections 26 and 27 will automatically cease to apply thereto by reason of the provisions contained in clause 28(4). Sections 24 to 26 can be formally repealed when action is taken by all the States to put the Indian Easements Act, 1882, into force.

Clause 28.—Sub-clause (2) amends section 29(2) of the existing Act to provide that the principles contained in clauses 4 to 23 apply

uniformly to all special or local laws, in the absence of any local laws excluding the application of any or all of those provisions in any given case.

Sub-clause (3) amplifies section 29(3) of the existing Act so as to exclude the application of this law to suits under any law dealing with marriage or divorce.

Clauses 29 and 30.—Suitable provisions are being made to cover cases where the period of limitation is being reduced, a longer period being allowed in the case of suits for redemption, etc., as the period is being reduced from sixty years to thirty years in such cases. In cases where the period is increased but the cause of action has already become barred, clause 30 makes it clear that the rights will not be revived thereby.

THE FIRST SCHEDULE

FIRST DIVISION

Part I.—Suits relating to accounts

Articles 1, 2, 3, 4 and 5 reproduce existing articles 85, 88, 89, 90 and 106 and deal with suits for accounts.

Part II.—Suits relating to contracts

Articles 6 to 55 relating to contracts, including implied contracts and quasi contracts, correspond to existing articles 7 to 9, 30, 31, 43, 50 to 84, 86, 87, 97, 99 to 102, 107 to 111, 113, 115 and 116. All these articles are now grouped together, the period being fixed at 3 years in all these cases. Wherever possible, articles which can be dealt with together have been combined. (Example: articles 7 and 102 have been combined in the new article 7). Similarly, articles which may conveniently be omitted in favour of the residuary entry have been omitted. (Example: articles 80, 83, 84, 108 and 116 have all been omitted in favour of the new residuary entry 113). The distinction between contracts in writing registered and other contracts is being done away with as not being necessary and the uniformity in the period prescribed for all suits founded on contracts (including those falling under the residuary entry 113) will remove the ever arising conflict under the present law as to which article applies—whether the residuary article providing for a longer period of limitation or any other specific article providing for a shorter period.

Part III.—Declaratory suits

Articles 56 and 57 reproduce existing articles 92 and 118, and article 58 combines existing articles 93, 119 and 120. All these articles relate to suits for declaration in respect of different matters.

Part IV.—Suits relating to decrees and instruments

Article 59 combines existing articles 91 and 114, and article 60 reproduces existing article 44 but is amplified to cover cases where the ward dies before attaining majority or within three years after attaining majority.

Part V.—Suits relating to immovable property

Article 61 replaces existing articles 148, 134 (in so far as it relates to mortgages) and 105, with the modification that in respect of suits for redemption the period is being reduced from 60 years to 30 years (and not to 12 years as recommended by the Law Commission).

Article 62 replaces existing article 132, at the same time making it clear that the article applies to mortgages also.

Article 63 replaces existing articles 147, 135 and 146, the period of limitation in respect of suits for foreclosure being reduced from 60 years to 30 years in conformity with the period now being prescribed for suits for redemption.

Articles 142 and 144 of the existing Act have given rise to a good deal of confusion with respect to suits for possession by owners of property. Article 64 as proposed replaces article 142, but is restricted to suits based on possessory title so that an owner of property does not lose his right to the property unless the defendant in possession is able to prove adverse possession.

Article 65 is new and deals with suits based on title. This will cover existing articles 136, 137 and 138 which are all suits based on title—that is to say, suits based on the title of the predecessor-in-interest of the purchaser, whether under an ordinary purchase or an execution sale. Existing article 47 may also be left to be covered by the new article 65 as recommended by the Law Commission in paragraph 124 of its Report. In view of article 65, existing article 144 is unnecessary. The provisions of existing articles 140 and 141 are being incorporated as suitable explanations to the new article 65. The last explanation to the new article 65 is intended to make it clear that a purchaser at a sale in execution of a decree shall be deemed to be a representative of the judgment-debtor who was out of possession at the date of the sale although it may be unnecessary in view of the definition of “plaintiff” which includes a person from or through whom the plaintiff derives his right to sue.

Articles 66 and 67 reproduce existing articles 143 and 139.

Part VI.—Suits relating to moveable property

Articles 68, 69, 70 and 71 reproduce existing articles 48 (first part), 49 (first part), 145 and 48A (second part) respectively. In the

new article 70, the date of refusal after demand is made the starting point of limitation and there would then be no need for a 30 year period as in the existing article 145.

Part VII.—Suits relating to tort

Articles 72 to 91 which correspond to existing articles 2, 19 to 29 and 32 to 42 deal with suits based on tort. Most of the existing articles are being retained and the existing periods of limitation are also not being changed except in a few cases. For example, the new article 72, which reproduces existing article 2 increases the period from 90 days to one year as being more reasonable. Articles 22 and 36 have been omitted in favour of the residuary entry 173.

Article 91 reproduces the latter part of articles 48 and 49.

Part VIII.—Suits relating to trusts and trust property

Articles 92 to 96 reproduce respectively existing articles 134 (first part), 48A (first part), 134A, 48B, 134B and 134C.

In the new article 96, replacing existing articles 134B and 134C, an amendment is made whereby the date of appointment of a new manager is also made the starting point of limitation in suitable cases.

Part IX.—Suits relating to miscellaneous matters

This Part groups together articles which cannot be included within any of the earlier parts.

Article 97 reproduces existing article 10.

Article 98 combines existing articles 11 and 11A.

Article 99 replaces existing article 12.

Article 100 combines articles 13 and 14.

Article 101 combines existing articles 117 and 122 but reduces the period to three years.

Articles 102, 103, and 105 reproduce existing articles 94, 98, 131 and 128.

Article 106 reproduces existing article 123 with the modification that it is intended to apply where the suit is brought against an executor or administrator or some person legally charged with the duty of distributing the estate.

Articles 107, 108, 109, 110, 111 and 112 reproduce respectively existing articles 124, 125, 126, 127, 146A and 149.

In article 112 dealing with suit by or on behalf of the Government, (which corresponds to existing article 149) the period is reduced from 60 years to 30 years, which will also bring the period in accord with